



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 01.08.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Cr1.A.No.32 of 2006

R.Veerasamy @ Senthil Kumar

.. Appellant/accused

Vs.

The State rep. by
The Station House Officer,
Thirunallar Police Station,
Karaikkal, Pondicherry,
(Cr.No.73 of 2002)

.. Respondent/Complainant

Prayer:- This appeal has been preferred against the judgment dated 26.10.2005 made in S.C.No.19 of 2004 on the file fo the Additional Sessions Judge, Pondicherry at Karaikkal.

For Appellant :Mr.S.Panneerselvam

For Respondent :Mr.M.R.Thangavelu,
Public Prosecutor, Pondicherry

JUDGMENT

The accused, who was convicted by the learned Additional Sessions Judge, Pondicherry at Karaikkal, in S.C.No.19 of 2004 under Section 376 r/w 511 IPC and under Section 354 IPC, is the appellant herein.

2.The learned Judicial Magistrate No.II, Karaikkal, who had taken the case on file, after securing the accused by way of summons, had issued copies under Section 207 of Cr.P.C., and committed the case to the Court of Sessions under Section 209 of Cr.P.C., since the case is exclusively triable by the Court of Sessions. The learned Additional Sessions Judge, on appearance of the accused before him, had framed charges under Section 376 r/w 511 IPC and under Section 354 IPC and when questioned, the accused pleaded not guilty. On the side of the prosecution P.W.1 to P.W.12 were examined, Ex.P.1 to Ex.P.10 were exhibited and M.O.1 to M.O.3 were marked.



3.P.W.1 is the father of the victim girl minor child Ramya aged 3 years. P.W.1 is not an eye witness to the occurrence. In fact he was away from home on the date of occurrence. He returned to home only at 8.00 pm in the night on 7.4.2002, the occurrence day. On seeing his wife and child crying, he enquired them and his wife had informed him that at about 6.30 pm on 7.4.2002 the accused had attempted to rape the child in her mother's house, which is situated nearby. At that time the child Ramya was running temperature. He took her to government hospital at Karaikal on 9.4.2002 and since no improvement was seen on her health condition, he took her to a private clinic on 10.4.2002 and since the temperature has not subsided, again he took her to government hospital at Karaikal on 12.4.2002. According to him, the doctor at Karaikal had noticed an injury on the private part of the child and enquired about that, to whom, he informed that there was an attempt of rape made by the accused on the child on 7.4.2002. Immediately the doctor at government hospital informed the police, who came and enquired him at his residence and he preferred Ex.P.1-complaint and once again his child was taken to government hospital at Karaikal and admitted as an inpatient for nearly one week therein. Police have seized the under garments of the child under mahazar in the presence of the witnesses and M.O.1 is the under garment worn by the child.

4.P.W.2 is the mother of Ramya. According to her, at the time of occurrence P.W.1 was not in the house and the child Ramya, aged 3 years, was playing in the house of her mother-in-law, which is situated adjacent to her house, on 7.4.2002 at 6.30 pm. She heard a distress call from her child and immediately she rushed to the house of her mother-in-law and his mother-in-law was also rushing to the house from backyard and she saw the accused going out of the house. She had seen her daughter Ramya keeping her hand on her private part and was crying. When she enquired the child, she showed her private part and told that Senthil Anna pressed her private part by embracing her. After 15 minutes the accused came there and took apology for what had happened. She had not noticed any visible external injuries on the private part of her daughter, who had developed fever thereafter. After her husband, returned to the house at 8.30 pm, she had narrated the incident and purchased some medicines locally and gave to the child. But the fever did not subside, then the child was taken to the government hospital at Karaikal and was treated by Dr.Duraisamy P.W.6. Even after the treatment her (P.W.2) child was running high temperature. So she took the child to the government hospital at Karaikal on the next day ie., on 10.4.2002, where P.W.4-Dr.Chitra had treated her child. After examining the child Dr.Chitra had informed her that there is a swelling in the private part of her daughter and enquired as to what had happened. Only at that time she had divulged about the incident to Dr.Chitra-P.W.4, who gave intimation to the Thirunallar police, who came to her house at 8.30 pm and enquired. Before the police she had preferred a complaint. The police have seized the under garments of the child while she was taking treatment in the hospital. P.W.2 has identified M.O.1 as



the inner garments of the child. Due to shame she has not preferred the complaint immediately.

5.P.W.3 would depose that on 12.4.2002 at about 9.00 pm, he saw P.W.1 & P.W.2 waiting in the bus stand at Sathur with their daughter Matharasi @ Ramya. On enquiry P.W.1 had informed him that his neighbour had misbehaved with his daughter and sexually assaulted her and they are going to the government hospital for treatment. Immediately, he went to the house of P.W.1 and saw Thirunallar police, who have prepared a rough sketch Ex.P.2 in his presence. M.O.1, inner garment of Ramya was seized by the police in his presence under Ex.P.3.

6.P.W.10 is the then Inspector of Police at Karaikkal, who had received the intimation from the hospital regarding the medico legal case under Ex.P.7. On receipt of Ex.P.7 he went to Pandaravadai, Sethur to the house of P.W.1 and enquired about the matter and recorded his statement. P.W.1 had preferred a written complaint, on the basis of which, he had registered the case in Thirunallar Police Station Cr.No.73/2002 under Section 376 IPC and took up the investigation. He had visited the place of occurrence at 22.00 hours on the same day and recorded the statement of P.W.1 under Ex.P.2. The child was referred to medical officer for examination. Then he had proceeded to the government hospital at Karaikal and recovered M.O.1-inner garment of the child Ramya under Ex.P.3-mahazar in the presence of P.W.3 and another witness Pakkirisamy. He has examined the witnesses and recorded their statements. He had arrested the accused at 10.00 am on the same day at Pandaravadai. He has also seized one lungi from the house of the accused under Ex.P.6-mahazar. M.O.2 is the lungi. He has examined the doctor, who have examined the victim girl, and recorded their statements. The accused was produced before the Judicial Magistrate for judicial remand. M.O.1 & M.O.2 were forwarded to the Court through Form-95 on 15.4.2002. He had made a request to the Court for sending the material objects connected with this case for chemical examination. Ex.P.9 is the copy of the said forwarding note. Ex.P.10 is the FIR.

7.P.W.11 is the successor of P.W.10. Ex.P.11 is the report received from Central Forensic Science Laboratory, Hyderabad. P.W.12 is the successor of P.W.11.

8.P.W.4 is the doctor, who had examined the victim girl Ramya on 12.4.2002. After getting the consent of the mother of the child, she had examined the child at 1.45 pm on the same day. No external injuries were seen by her. She has informed Dr.Durairsamy, specialist in pediatric, for examining the child. On his advice she has prescribed tablets for the child, who had some tenderness over the upper abdomen. Based on medical records, she had recorded her opinion that there was no evidence of sexual intercourse and the child was discharged from the hospital on 18.4.2002.



9.P.W.5 is the doctor, who had examined the accused and issued Ex.P.5-certificate stating that the accused is potent.

WEB COPY

10.P.W.6 - Dr.S.Duraisamy had treated the child Ramya for the complaint of vomiting, cough & fever. He has diagnosed that the child was suffering from viral fever. He has noticed tenderness over the upper abdomen of the child. By referring the child to a surgeon, he had ruled out the surgical problem. The child was discharged after treatment on 18.4.2002. He has opined that if a child of 3 years is subjected to sexual pressure, she will develop trauma. The sudden trauma subjected to the victim child would not have created respiratory problem. According to the doctor, the child was suffering from viral fever, for which he has given treatment.

11.P.W.7 would depose that the lungi of the accused was seized in his presence by the police under a mahazar. Be he was treated as a hostile witness.

12.P.W.8, Dr.Sivakumar, has treated the child Ramya on 10.4.2002 at his private clinic at Sethur, Thirunallar, Karaikkal. He has treated the child only for fever. According to him, Ex.P.7-intimation to police was prepared by one Dr.Raju, who is now no more, but he knows his signature.

13.P.W.9 has seen P.W.1 & P.W.2 along with their child Ramya on 10.4.2002 at 7.00 pm in the bazaar at Sethur. P.W.1 & P.W.2 have informed him that they are taking the child to Dr.Sivakumar for consultation, since the health of the child is deteriorating. According to him, P.W.1 & P.W.2 have informed that the child was subjected to sexual assault by their neighbour Veerasamy.

14.P.W.12, after completing the formalities had laid the charge sheet against the accused under Section 376 r/w 511 IPC and under Section 354 IPC on 31.12.2003.

15.When incriminating circumstances were put to the accused under Section 313 of Cr.P.C., the accused would deny his complicity with the crime. After going through the evidence both oral and documentary the learned trial judge has held that the accused is liable to be convicted under Section 376 r/w 511 IPC and also under Section 354 IPC and accordingly the learned trial Judge convicted the accused under Section 376 r/w 511 IPC and sentenced to undergo 7 years RI and slapped a fine of Rs.25,000/- with default sentence and also convicted the accused under Section 354 IPC and sentenced to undergo 2 years RI, which necessitated the accused to prefer this appeal.



16. Now the point for determination in this appeal is whether the conviction and sentence passed by the learned trial judge against the accused under Section 376 r/w 511 IPC and also under Section 354 IPC is sustainable for the reasons stated in the memorandum of appeal?

17. The Point:- P.W.2 is the mother of the victim girl, who is aged 3 years at the time of occurrence. She had seen the accused, after hearing the distress call from her child victim girl Ramya at 6.30 pm on 7.4.2002 from the house of her mother-in-law, which is situated adjacent to her house while she was entering in to the house of her mother-in-law, the accused was going out of the house and that the child was crying. It is the definite case of P.W.2 that Ramya, the child aged 3 years, told that the accused had made sexual assault on her by embracing her. But unfortunately in this case Ramya was not examined as a witness, when she is capable of knowing about the occurrence to her mother, according to the prosecution. According to P.W.2, subsequently the accused came and took apology from her and the child had developed fever and since her husband returned only at 8.00 pm on the date of occurrence, she could not prefer the complaint immediately. The child was examined by P.W.4 on 12.4.2002 for the first time at government hospital at Karaikal. According to P.W.4, the child Ramya was accompanied to the hospital with her mother P.W.2. Ex.P.4 is the certificate issued by P.W.4. The doctor has only noticed tenderness over the upper abdomen of the child. But in Ex.P.4, the doctor has not mentioned any tenderness seen on the upper abdomen of the victim child. The doctor has opined that she has not seen any external injury on the genitalia of the victim girl and that she is definite that the child was not subjected to any sexual violation. P.w.6 is the doctor, who had examined the victim girl on 12.4.2002. he had treated the child for viral fever and gastritis. He had noticed tenderness over the upper abdomen of the child and to rule out any surgical problem he had referred the child to a Surgeon and after ascertaining that there is no need for surgery, the child was discharged on 18.4.2002. P.W.8 Dr.Sivakumar had treated the child on 10.4.2002 for fever. P.W.8 is the first doctor, who had examined the victim girl after the alleged occurrence, which took place on 7.4.2002. But he has not noticed any external injuries on the private part of the child. So absolutely there is no evidence on record to show that the victim girl was subjected to any sexual assault by the accused or to show that the modesty of the child was outraged by the accused to warrant conviction under section 376 r/w 511 IPC or under Section 354 IPC. Under such circumstances, I am of the view that the prosecution has miserably failed to prove the guilt of the accused beyond any reasonable doubt to warrant conviction under Section 376 r/w 511 IPC and under Section 354 IPC. Point is answered accordingly.



18. In fine the appeal is allowed and the conviction and sentence of the accused under Section 376 r/w 511 IPC and under Section 354 IPC passed by the trial judge in S.C.No.19 of 2004 on the file of the Additional Sessions Judge, Pondicherry at Karaikkal is set aside and the accused is acquitted from all the charges levelled against him. Fine, if any paid, is to be refunded to the accused. The accused is set at liberty forthwith.

SSV

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1.The Additional Sessions Judge,
Pondicherry at Karaikkal.

2.-do- Thro'The District & Sessions Judge,
Pondicherry.

3.The Public Prosecutor,
Pondicherry.

4. The Superintendent Central Prison, Pondicherry.

5.The Station House officer,
Thirunallur Police Station,
Karaikkal,Pondicherry.

6.The Sub-Jail,
Pondicherry at Karaikkal.

+1 cc to Mr.S.Panneerselvam, Advocate Sr.No.48366.

+1 cc to The Government Pleader Sr.No.48216.

SSV(CO)
dcp/9.8

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